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Attorneys for Defendant/Counterclaimant, Wal-Mart Stores, Inc.

RECEIVED

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AT 8:30 M
WILLIAM T. WALSH
CLERK

BODY CARE GROUP,	:	UNITED STATES DISTRICT COURT
	:	DISTRICT OF NEW JERSEY
	:	
Plaintiff/Defendant on the Counterclaim,	:	CIVIL ACTION NO. 2:03cv03338 (KSH)
	:	
vs.	:	CIVIL ACTION
	:	
WAL-MART STORES, INC.,	:	
	:	COUNTERCLAIM
Defendant/Counterclaimant.	:	
	:	
	:	

COUNTERCLAIM

Defendant/Counterclaimant, Wal-Mart Stores, Inc. (Wal-Mart), by way of Counterclaim against Plaintiff/Defendant on the Counterclaim, Body Care Group, states:

FIRST COUNT

1. Defendant/Counterclaimant, Wal-Mart Stores, Inc., is a Delaware Corporation with its principal place of business in Bentonville, Arkansas.
2. Wal-Mart purchased merchandise manufactured , sold, and/or distributed by Plaintiff/Defendant on the Counterclaim, Body Care Group.
3. Pursuant to a Vendor Agreement between Body Care Group and Wal-Mart, any defective merchandise was to be processed through Wal-Mart Return Centers rather than being returned to Body Care Group, and Wal-Mart was to be credited for the amount of said defective merchandise, or paid by Body Care Group for the value of same.
4. Wal-Mart has advised Body Care Group of the amount owed to it by Body Care Group, but Body Care Group has failed to pay the amount due Wal-Mart and has failed to credit Wal-Mart for the amount owed.
5. There is due from Body Care Group the sum of \$111,169.90, together with lawful interest.

6. Notwithstanding Wal-Mart's demand for payment, no payment has been made or credited to Wal-Mart.

WHEREFORE, Defendant/Counterclaimant, Wal-Mart Stores, Inc., demands judgment against Body Care Group for the following relief:

- a) Compensatory damages in the amount of \$11,169.90;
- b) Interest;
- c) Counsel fees; and
- d) Costs of suit.

SECOND COUNT

1. Defendant/Counterclaimant repeats and reiterates the allegations contained in the First Count of the Complaint as if set forth at length.

2. Defendant/Counterclaimant sues Body Care Group for the sum of \$111,169.90 for goods sold and delivered to it by Body Care Group which merchandise was defective in a book account, a true copy is annexed hereto as Exhibit "A".

WHEREFORE, Defendant/Counterclaimant, Wal-Mart Stores, Inc., demands judgment against Body Care Group for the following relief:

- a) Compensatory damages in the amount of \$111,169.90;
- b) Interest;
- c) Counsel fees; and
- d) Costs of suit.

THIRD COUNT

1. Defendant/Counterclaimant repeats and reiterates the allegations contained in the First and Second Count of the Complaint as if set forth at length.

2. Pursuant to the Vendor's Agreement between Wal-Mart Stores, Inc. and Body Care Group, Wal-Mart is entitled to a credit for defective merchandise.

3. Body Care Group has failed and/or refused to credit Wal-Mart for sums that may be owed to it by Body Care Group.

WHEREFORE, defendant/counterclaimant, Wal-Mart Stores, Inc., demands judgment against Body Care Group for the following relief:

- a) Compensatory damages in the amount of \$111,169.90;
- b) Interest;
- c) Counsel fees; and
- d) Costs of suit.

FOURTH COUNT

1. Defendant/Counterclaimant repeats and reiterates the allegations contained in the First, Second and Third Count of the Complaint as if set forth at length.

2. Body Care Group is indebted to Wal-Mart in the sum of \$111,169.90 plus interest, which it did promise to pay Wal-Mart.

3. Wal-Mart has demanded payment, but same has not been paid.

WHEREFORE, defendant/counterclaimant, Wal-Mart Stores, Inc., demands judgment against Body Care Group for the following relief:


- a) Compensatory damages in the amount of \$111,169.90;
- b) Interest;
- c) Counsel fees; and
- d) Costs of suit.

DESIGNATION OF TRIAL COUNSEL

The Court is hereby advised that Richard D. Millet, Esq. is hereby designated as trial counsel.

RICHARD D. MILLET & ASSOCIATES LLC
Attorneys for Defendant/Counterclaimant
Wal-Mart Stores, Inc.

Dated: February 27, 2004

By: 
RICHARD D. MILLET

Supplier # 728050
 Invoice Number 138098644
 Invoice Date 3/3/03

**RETURN CENTER
 NOTIFICATION OF CLAIM**
 A Division of Wal-Mart Stores, Inc.
 1108 SE 10th Street
 Bentonville, Arkansas 72716-8002
 (479) 277-2965

To: Body Care Group

- 1) All correspondence regarding this claim should be sent to the following address:

Return Center Accounting Office #13-8002
 1301 SE 10th Street
 Bentonville, AR 72716-8002

- 2) This document is not being sent with the check but is instead being sent to the address provided by your company. Changes to this address must be requested in writing.

Description	Amount
Defective Merchandise processed through Wal-Mart Return Centers from 2/1/02 to 1/31/03.	121,089.99
Credits received from supplier from 2/1/02 to 1/31/03 (Warehouse Invoices)	9,920.09
Credits received from store invoices.	0.00
Excess defectives -- Total Deduction	111,169.90

CERTIFICATION OF SERVICE

Richard D. Millet, Esquire, declares as follows:

1. I am an attorney-at-law of the State of New Jersey with the firm of Richard D. Millet & Associates LLC, Attorneys for Defendant/Counterclaimant, Wal-Mart Stores, Inc. As such, I am familiar with the facts set forth herein.

2. I hereby declare that on this date I served a copy of the within Counterclaim on the plaintiff in this action by mailing the same via first-class mail, postage prepaid, to Scott H. Goldstein, Esq., Sokol, Behot & Fiorenzo, Esqs., 433 Hackensack Avenue, Hackensack, New Jersey, 07601, Attorneys for Plaintiff/Defendant on the Counterclaim.

3. Pursuant to 28 U.S.C. Section 1746, I declare under penalty of perjury that the foregoing is true and correct.

RICHARD D. MILLET & ASSOCIATES LLC
Attorneys for Defendant/Counterclaimant
Wal-Mart Stores, Inc.

Dated: February 27, 2004

By: 
RICHARD D. MILLET